

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Patricia Bostick and Johnny Thompson,)
in Their Individual Capacities as) **Civil Action File No.**
Surviving Children of Patricia)
Thompson, and Patricia Bostick, as the)
Executor of the Estate of Patricia)
Thompson,,)
Plaintiffs,)
v.)
Roberta Operator, LLC d/b/a Roberta)
Health and Rehab, Mission Health of)
Georgia, LLC d/b/a Roberta Health and)
Rehab, and John Does Nos. 1-10,)
Defendants.)

DEFENDANTS' PETITION FOR REMOVAL

Pursuant to 28 U.S.C. § 1441, Defendants Roberta Operator, LLC d/b/a Roberta Health and Rehab, and Mission Health of Georgia, LLC d/b/a Roberta Health and Rehab, (hereinafter referred to as “Defendants”), hereby petition this Court for removal of this action, and show this Honorable Court the following:

1.

This civil action was filed by Plaintiffs Patricia Bostick and Johnny Thompson, in Their Individual Capacities as Surviving Children of Patricia

Thompson, and Patricia Bostick, as the Executor of the Estate of Patricia Thompson (the “Plaintiffs”) in the State Court of Gwinnett County, Georgia, said county being part of the Northern District of Georgia, Atlanta Division. N.D. Ga. Local Rule 3.1(A), LR App. A, I. The Atlanta Division of this Court is the proper Division for this removal as further set forth below.

2.

The action is a civil action for wrongful death, personal bodily injuries and medical expenses, and this Court has subject matter jurisdiction by reason of the diversity of citizenship of the parties. 28 U.S.C. §§ 1441, 1332.

3.

The amount in controversy exceeds \$75,000.00, the statutory minimum amount, exclusive of interest and costs, as evidenced by Plaintiffs’ Responses to Defendants’ First Request for Admissions to Plaintiff. This amount is evidenced in Plaintiffs’ responses to Requests for Admissions Nos. 1 – 3. A true and correct copy of the Plaintiffs’ Responses to Defendants’ First Request for Admissions is attached hereto and incorporated herein by reference as Exhibit A.

4.

At the time of the commencement of this action in the State Court of Gwinnett County, upon information and belief, and according to Plaintiff's Complaint, the Plaintiffs were and are now a citizen of Georgia.

5.

Defendants, at the time the action were commenced and at the present time, were and still are limited liability companies, incorporated and existing under and by virtue of the laws of Florida having its principal place of business in Florida. The citizenship of the natural persons who are members of the limited liability companies are domiciled in Florida.

6.

Further, the existence of unidentified or "John Doe" defendants does not defeat diversity for removal purposes. 28 U.S.C. § 1441(b)(1).

7.

The complete diversity requirement in 28 U.S.C. § 1332 has been satisfied.

8.

True and correct copies of all process, pleadings, and orders served upon Defendants in this action are attached hereto collectively as Exhibit B.

9.

The Plaintiffs alleges in the Complaint that, “As a result of the negligence and gross negligence of Defendants Roberta Operator, LLC d/b/a Roberta Health and Rehab, Mission Health of Georgia, LLC d/b/a Roberta Health and Rehab, and John Does Nos. 1-10, Patricia Thompson ultimately died from her injuries and conditions. (Exhibit B, Complaint, ¶ 31).

10.

This civil action is based on a controversy between citizens of different states, and as outlined above, the amount in controversy exceeds \$75,000.00. (See Exhibit A.). As such, this matter has become ripe for removal based on federal diversity jurisdiction.

11.

Accordingly, this action, over which this Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1332, is removable to the United States District Court for the Northern District of Georgia, pursuant to 28 U.S.C. § 1441.

12.

Venue is proper in the Atlanta Division of the United States District Court for the Northern District of Georgia pursuant to 28 U.S.C. § 1441, 28 U.S.C. § 1391, and N.D. Ga. Local Rule 3.1(B)(1)(a). Specifically, Plaintiff's Complaint was filed in the State Court of Gwinnett County, which is part of the Atlanta Division. See N.D.G.A. Local Rule 3.1(A), LR App. A, I.

13.

The instant *Petition for Removal* is being timely filed pursuant to and in accordance with 28 U.S.C. § 1446(b)(3), within thirty days of this action became removable. (See Exhibit A.).

14.

Further, the instant Petition is timely filed, pursuant to and in accordance with 28 U.S.C. § 1446(c)(1), within one year of the commencement of the action.

15.

As required by 28 U.S.C. § 1446(d), Defendants shall give written notice hereof to all adverse parties and shall file a copy of this Petition with the Clerk of the State Court of Gwinnett County.

WHEREFORE, Defendants request that this action be removed from the State Court of Gwinnett County and proceed in this Court.

Respectfully submitted the 5th day of May, 2023.

GRAY, RUST, ST. AMAND,
MOFFETT & BRIESKE, LLP

By: /s/ **Sean Herald**

Matthew G. Moffett

Georgia Bar No. 515323

Sean T. Herald

Georgia Bar No. 246729

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Patricia Bostick and Johnny Thompson,)	
in Their Individual Capacities as)	Civil Action File No.
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Thompson, and Patricia Bostick, as the)	_____
Executor of the Estate of Patricia)	
Thompson,,)	<i>Removed from:</i>
)	State Court of Gwinnett County
Plaintiffs,)	Civil Action No. 23-C-00147-S3
)	
v.)	
)	
Roberta Operator, LLC d/b/a Roberta)	
Health and Rehab, Mission Health of)	
Georgia, LLC d/b/a Roberta Health and)	
Rehab, and John Does Nos. 1-10,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE AND COMPLIANCE WITH L.R. 5.1

This is to certify that I have this day served the **DEFENDANTS'**
PETITION FOR REMOVAL upon all counsel of record by electronic mail and
depositing same in the United States mail in a properly addressed envelope with
adequate postage thereon to:

**Lindsay Simmons
David Dozier
Dozier Law Firm, LLC
487 Cherry Street
Macon, Georgia 31201**

This is to further certify that the foregoing complies with the font and point selections approved by the Court in Local Rule 5.1. It is prepared in Times New Roman 14-point font.

The 5th day of May, 2023.

By: /s/ **Sean Herald**

Matthew G. Moffett

Georgia Bar No. 515323

Sean T. Herald

Georgia Bar No. 246729

*Attorneys for Defendants Roberta
Operator, LLC d/b/a Roberta Health and
Rehab, and Mission Health of Georgia,
LLC d/b/a Roberta Health and Rehab*